

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

JAMES COLLIER, et al.)	CASE NO. 11-CV-2341
)	
Plaintiffs,)	
)	JUDGE JAMES GWIN
v.)	
)	
NVR MORTGAGE FINANCE, INC., et)	
al.)	<u>PROPOSED FIRST AMENDED</u>
)	<u>COMPLAINT</u>
Defendants.)	
)	(Jury Demand Endorsed Hereon)
)	

Plaintiffs James and Vanessa Collier and Robert and Mary Potts state for their First Amended Complaint against Defendants as follows:

1. At all times relevant, Plaintiffs James and Vanessa Collier were a married couple, who purchased a home at 6288 Whitetail Run in Oakwood, Ohio, within Cuyahoga County, with the closing on the sale of the property taking place in November 2007.

2. At all times relevant, Plaintiffs Robert and Mary Potts were a married couple, who purchased a home at 6282 Whitetail Run in Oakwood, Ohio, within Cuyahoga County, with the closing on the sale of the property taking place in October 2007.

3. At all times relevant, Defendants NVR Mortgage Finance, Inc. and NVR, Inc. dba Ryan Homes were corporate entities, licensed by the State of Ohio, which were involved in the construction, finance and sale of new homes in the State of Ohio, and which were involved in the construction, finance and sale of Plaintiffs' homes at 6288 Whitetail Run, Oakwood, Ohio and 6282 Whitetail Run, Oakwood, Ohio.

4. Upon information and belief, Defendant NVR Mortgage Finance, Inc. is a wholly owned subsidiary of NVR, Inc.

5. The homes purchased by Plaintiffs sit in a subdivision developed by the Defendants called The Meadows at Oakwood.

6. Representatives from Defendants acted as agents for all of the Plaintiffs in the negotiation and purchase of the properties at 6288 Whitetail Run, Oakwood, Ohio and 6282 Whitetail Run, Oakwood, Ohio, respectively, and all actions of those representatives were committed with the actual or apparent authority of Defendants.

7. Defendants are engaged in the business of new residential real estate construction and sale, and had significant experience and knowledge in that area, including, but not limited to the interplay between new construction and real estate taxes.

8. Upon information and belief, as more fully set forth below, Defendants manipulated their knowledge of the new construction and real estate taxes by fraudulently misleading Plaintiffs about their estimated real estate taxes and estimated monthly payments on the properties at 6288 Whitetail Run, Oakwood, Ohio and 6282 Whitetail Run, Oakwood, Ohio.

COUNT I

9. Plaintiffs incorporate paragraph 1 through 8 of this Complaint as if fully rewritten herein.

10. During the negotiation and sale of the properties at and 6288 Whitetail Run, Oakwood, Ohio and 6282 Whitetail Run, Oakwood, Ohio, respectively, Defendants, through their respective agents, operatives and/or employees, intentionally misrepresented and/or deliberately omitted information in communications with the Plaintiffs regarding the real estate taxes owed on those properties, and the estimated total monthly payments, including those taxes.

11. Specifically, during negotiation and closing on the properties, Plaintiffs were presented with information regarding the total monthly payments on their properties, inclusive of mortgage, interest, homeowners' insurance and real estate taxes.

12. During this negotiation and during the closing on the properties, each of the Plaintiffs was provided with a Cost Estimate Evaluation, which included the Defendants' representation as to the yearly property taxes which would be due on each of the Plaintiffs' respective properties.

13. A copy of Plaintiffs Vanessa and James Collier's Cost Estimate Evaluation is attached hereto as Exhibit 1. A copy of Plaintiffs Robert and Mary Potts' Cost Estimate Evaluation is attached hereto as Exhibit 2.

14. Plaintiffs made additional specific inquiries to Defendants' agent Amy Doroba regarding the accuracy of the Cost Estimate Evaluation, the total monthly payment owed by Plaintiffs on the properties, and the amount of real estate taxes to be owed on the properties.

15. Defendants, through their mutual agent Amy Doroba, confirmed the representations contained within Exhibits 1 and 2, including the rough amount of monthly payments owed for real estate taxes and the total estimated monthly payments.

16. Upon information and belief, the Defendants willfully misrepresented the amount of expected real estate taxes and the total monthly payments in order to induce Plaintiffs into purchasing the aforementioned properties.

17. Upon further information and belief, the Defendants knew that the real estate tax estimate represented to Plaintiffs was an inaccurate portrayal of the likely future tax payments.

18. Upon further information and belief, the Defendants knew that the total monthly payments on both properties as represented to Plaintiffs were inaccurate portrayals of the likely future monthly payments.

19. Upon further information and belief, with the purpose of fraudulently inducing the Plaintiffs to believe that they could afford the properties at 6288 and 6282 Whitetail Run, Oakwood, Ohio, the Defendants knowingly misrepresented to Plaintiffs the total monthly payments to be owed on the properties.

20. In fact, Plaintiffs did rely on Defendants' false representations in purchasing their home at 6288 and 6282 Whitetail Run, Oakwood, Ohio, and such representations were material to their respective decisions to purchase the homes at 6288 and 6282 Whitetail Run, Oakwood, Ohio.

21. In early 2008, only three months after Plaintiffs Robert and Mary Potts closed on their property, the Potts' real estate taxes and total monthly payments drastically increased, with the total payment going up by over 15%.

22. Plaintiffs James and Vanessa Collier's payments did not reflect any increase in 2007, 2008 or 2009. Their monthly escrow invoice was roughly equivalent to the estimated monthly payment that had been represented by Defendants.

23. However, in 2010, like the Potts, Plaintiffs James and Vanessa Collier's escrow invoice jumped by over 15%.

24. Upon information and belief, the reason for this dramatic jump in 2010 was that the Colliers' real estate taxes, which were supposed to have been paid through escrow, had not been paid from 2008 through 2010.

25. Upon further information and belief, Defendants permitted this non-payment to occur, so that the Colliers' monthly payments in 2008 and 2009 matched with the Defendants' prior representations.

26. Plaintiffs' respective reliance on the Defendants' representations as described above caused Plaintiffs harm in the form of financial damage, an inability to pay for their homes and emotional distress related to these financial damages.

27. Upon information and belief, this pattern of misrepresentation was very common or uniform among new home purchasers in The Meadows at Oakwood.

28. In fact, Defendants fraudulent or willful misrepresentations have resulted in an inordinate amount of foreclosures and tax delinquencies throughout The Meadows at Oakwood.

29. Defendants' actions referenced herein further reflect a willful disregard for the rights of Plaintiffs, entitling Plaintiffs to an award of punitive damages.

WHEREFORE, Plaintiffs pray for the following relief:

(a) As to Plaintiffs James and Vanessa Collier, damages in excess of Twenty-Five Thousand Dollars (\$25,000) in compensatory damages and Twenty-Five Thousand Dollars (\$25,000) in punitive damages, as well as attorneys' fees, costs of this action and any other relief that this Court deems just and appropriate; and

(b) As to Plaintiffs Robert and Mary Potts damages in excess of Twenty-Five Thousand Dollars (\$25,000) in compensatory damages and Twenty-Five Thousand Dollars (\$25,000) in punitive damages, as well as attorneys' fees, costs of this action and any other relief that this Court deems just and appropriate.

Respectfully submitted,

/s/ Scott D. Perlmutter _____

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JURY DEMAND

A jury pursuant to Civil Rule 38(B) is hereby demanded for all issues.

/s/ Scott D. Perlmutter _____

SCOTT D. PERLMUTER (0082856)

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2011, a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Scott D. Perlmuter
SCOTT D. PERLMUTER (0082856)